

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOVENCIO DELA CALZADA,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

Case No. [23-cv-00030-WHO](#) (PR)

ORDER OF DISMISSAL

INTRODUCTION

Petitioner Jovencio Dela Calzada has filed a habeas petition under 28 U.S.C. § 2254 in which he challenges the same state court judgment he challenged in a prior habeas action in this district, *Dela Calzada v. Gipson*, No. 14-cv-00103 WHO. The pending petition will be dismissed as second or successive to the prior petition.

BACKGROUND

The first habeas petition was denied on the merits. (*Dela Calzada*, No. 14-cv-00103, Dkt. No. 19.) Petitioner appealed, but the Ninth Circuit Court of Appeals denied his request for a certificate of appealability. (*Id.*, Dkt. No. 33.)

The prior and current petitions are challenges to the 2011 California state convictions and sentence Dela Calzada received in the Contra Costa Superior Court for committing multiple sexual offenses against two of his stepdaughters, for which he received a sentence of 173 years to life in state prison. (*Id.*, Order Denying Petition, Dkt. No. 19 at 1-2; Instant Petition, Dkt. No. 1 at 1-2; *People v. Dela Calzada*, No. A133098, 2012 WL 5279770 (Cal. Ct. App. Oct. 26, 2012) (unpublished).)

1 **DISCUSSION**

2 The pending petition is barred by the rule against filing a second or successive
 3 petition. As noted, Dela Calzada has filed at least one previous petition regarding the same
 4 state court judgment challenged in the pending petition. In order to file a second or
 5 successive petition, a petitioner must obtain an order from the Court of Appeals
 6 authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A).
 7 Without that authorization, a district court lacks jurisdiction over the petition. *Burton v.*
 8 *Stewart*, 549 U.S. 147, 153 (2007). Because Dela Calzada has not shown that he has
 9 received such authorization, the pending petition must be dismissed as second or
 10 successive, the filing of which has not been authorized by the Court of Appeals.
 11 Accordingly, the petition is DISMISSED.

12 **CONCLUSION**

13 The pending petition is DISMISSED as second or successive, the filing of which
 14 has not been authorized by the Court of Appeals.

15 A certificate of appealability will not issue. Petitioner has not shown “that jurists of
 16 reason would find it debatable whether the petition states a valid claim of the denial of a
 17 constitutional right and that jurists of reason would find it debatable whether the district
 18 court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

19 The filing fee has been paid. (Dkt. No. 3.)

20 The Clerk shall enter judgment in favor of respondent, and close the file.

21 **IT IS SO ORDERED.**

22 **Dated:** May25, 2023

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 24 WILLIAM H. ORRICK
 25 United States District Judge
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